

**AGREEMENT BETWEEN THE CITY OF FRISCO, TEXAS  
AND THE FRISCO ASSOCIATION FOR THE ARTS**

THIS agreement between the City of Frisco, Texas, a Texas home-rule municipal corporation, ("City" or "Frisco") and Frisco Association for the Arts, Inc., a Texas non-profit corporation, ("Contractor") is entered into effective as of the date written below ("Agreement").

**RECITALS**

WHEREAS, Contractor was established for the purpose of, and is committed to, promoting, financing and facilitating public displays and performances of the arts; and

WHEREAS, City desires to promote, encourage, improve and foster the development of fine arts to attract visitors and tourists by making Frisco more appealing to the world, to culturally enrich and benefit visitors, tourists and citizens of Texas so that they will repeatedly visit Frisco, and to develop in Frisco and to attract to Frisco outstanding displays and performances in the field of fine arts through appropriate programs of publicity that will attract visitors and tourists; and

WHEREAS, City has determined the most effective way to accomplish the objectives stated herein and to develop fine arts in a manner that encourages visitors and tourism to Frisco is to provide funds to Contractor to perform such activities; and

WHEREAS, Contractor has demonstrated its ability to perform such activities; and

WHEREAS, the City Council of the City ("City Council") finds that expending public funds to meet the objectives stated herein is a valid public purpose; and

WHEREAS, the City Council has further investigated into and determined that it will be advantageous and beneficial to Frisco and its inhabitants to develop fine arts programs in a manner that encourages visitors and tourism.

NOW, THEREFORE, for and in consideration of the covenants, obligations and mutual promises made herein, the parties agree as follows:

**ARTICLE I  
PURPOSE/AMOUNT OF FUNDING**

The purpose of this Agreement is to provide terms and conditions under which City shall make available to Contractor a sum of seventy five thousand dollars (\$75,000.00) ("Funds") to be used as described in this Agreement.

The City's source of the Funds is municipal hotel occupancy taxes ("Taxes") authorized by Chapter 351 of the Texas Tax Code. The funding is budgeted for the 2009-2010 fiscal year of the City, and in consideration of said budgeting Contractor shall abide by the terms and conditions of this Agreement.

Following approval of the Contractor's budget for the Funds, as required by Article II, City shall disburse the Funds to Contractor.

## **ARTICLE II PERMITTED USES OF FUNDS/CONDITIONS OF USE**

Contractor shall only use the Funds as set forth in this Agreement. Any Funds not used as set forth herein shall promptly be returned to City.

Contractor must maintain the Funds in a separate account and may not commingle the Funds with any other revenue of Contractor.

The City Council is required by law to approve in advance that portion of Contractor's annual budget relating to the Funds since it is delegating to Contractor the promotion of tourism through the encouragement, promotion, improvement, and application of the arts by the use of Taxes. Prior to City releasing the Funds to Contractor, Contractor shall submit a budget, setting forth in detail how the Funds will be used and expended by Contractor, to City Council for approval.

Funds shall be used by Contractor for:

- a. Public displays of fine art;
- b. Public performances of the arts;
- c. Administrative expenses, including day-to-day operations, supplies, salaries and office rental, only if such administrative expenses are incurred directly in the promotion and servicing of expenditures authorized herein; or
- d. Other such expenditures that will promote, encourage, improve and foster the development of fine arts to attract visitors and tourists to Frisco, as pre-approved by the City Council.

## **ARTICLE III REQUIRED REPORTING**

Not later than thirty (30) days following the end of a quarter, Contractor shall submit a report to the City Council listing in detail the expenditures made with the Funds and providing a general explanation of how the expenditures furthered the public purpose and objectives of this Agreement.

Contractor shall maintain complete and accurate financial records of each expenditure of Funds and, on request of City Council or the City manager, shall make the records available for inspection and review by an authorized City representative. The records shall be made available during regular business hours and not later than three (3) business days after requested to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to City upon request.

The City shall have the right to review any and all contracts or grants to be paid for, in whole or in part, with Funds prior to execution by the Contractor, and to require that such terms

and conditions as it deems necessary to protect the City's interests be modified, added or deleted. Contractor will provide as much notice to City as is reasonably practicable prior to execution of the afore-mentioned contracts or grants, and City will be provided a reasonable amount of time to review and approve the contracts.

Contractor agrees to on-site inspection of its facilities and/or programs by the City, at City's option.

Improper use of Funds provided by City may result in the termination of this Agreement, forfeiture of any outstanding Funds to be provided by the City and/or return of previous Funds received from the City.

#### **ARTICLE IV PROHIBITED INTEREST**

The Contractor agrees that it is aware of the prohibited interest requirement of the City Charter and will abide by the same. Further, a lawful representative of Contractor shall execute the Affidavit attached hereto as Exhibit "A" and incorporated herein by reference for all purposes. Contractor understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

#### **ARTICLE V INDEMNITY**

Contractor shall release, defend, indemnify and hold harmless City and its City Council members, officers, agents, representatives and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the services caused by the negligent act and/or intentional act and/or omission of Contractor, its officers, agents, representatives, employees, subcontractors, licensees, invitees or any other third parties from whom Contractor is legally responsible (hereinafter "Claims"). Contractor is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Contractor's obligation to defend City or as a waiver of Contractor's obligation to indemnify City pursuant to this Agreement. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City.

## MISCELLANEOUS PROVISIONS

- a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to City, to: City of Frisco, Texas  
Attn: City Manager  
6101 Frisco Square Blvd.  
Frisco, TX 75034

If to Contractor, to: Frisco Association for the Arts  
6827 W. Main St.  
Frisco, TX 75034  
Attn: Amy Hardin - President

- b) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.
- c) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
- d) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- e) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- f) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- g) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

- h) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- i) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- j) Sovereign Immunity. The parties agree that no party has waived its sovereign immunity by entering into and performing their respective obligations under this Agreement.
- k) Assignment. This Agreement or any part thereof may not be assigned.
- l) Term. Unless otherwise terminated as provided herein, this Agreement shall terminate after Contractor has used all of the Funds and the final quarterly report required to be submitted to the City Council by the Contractor is accepted by the City Council.
- m) Termination. This Agreement may be terminated by the City Council if Contractor fails to perform any obligations hereunder or improperly uses the Funds. The City Council may require Contractor to return any Funds previously received if the Funds are not used as provided herein.

CITY OF FRISCO, TEXAS

By: \_\_\_\_\_  
Name: George Purefoy  
Title: City Manager  
Date: \_\_\_\_\_

FRISCO ASSOCIATION FOR THE ARTS, INC.

By: \_\_\_\_\_  
Name: Amy Hardin  
Title: President  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney  
Abernathy, Roeder, Boyd & Joplin

STATE OF TEXAS           \*  
                                     \*  
COUNTY OF COUNTY       \*

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for Frisco Association for the Arts, and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of November, 2009.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS           \*  
                                     \*  
COUNTY OF COLLIN       \*

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for the City of Frisco, Texas, and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of November, 2009.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**AFFIDAVIT**

THE STATE OF TEXAS                   §

COUNTIES OF COLLIN/DENTON §

I, \_\_\_\_\_ a member of the consultant team make this affidavit and hereby on oath state the following: I, and/or a person or persons related to me, have a substantial interest in a business entity that would be peculiarly affected by my work or decision on the project as those terms are defined in Article 988b, V.T.C.S.

The business entity is: \_\_\_\_\_  
have/has) a substantial interest in this business entity for the following reasons: (Check all which are applicable)

- \_\_\_ Ownership of 10% or more of the voting shares of the business entity.
- \_\_\_ Ownership of \$2,500 or more of the fair market value of the business entity.
- \_\_\_ Funds received from the business entity exceed 10% of income for the previous year.
- \_\_\_ Real property is involved and have an equitable or legal ownership with a fair market value of at least \$2,500.
- \_\_\_ A relative of mine has substantial interest in the business entity or property that would be affected by my decision of the public body of which I am a member.
- \_\_\_ Other: \_\_\_\_\_

Upon the filing of this affidavit with the City of Frisco, Texas, I affirm that I will abstain from acting on any decision involving this business entity and from any further participation on this matter whatsoever.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_ and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires: \_\_\_\_\_